

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES E. DAVIS, et. al

PLAINTIFFS

vs.

CAUSE NO. 3:11-CV-093-MPM-SAA

ACA FINANCIAL GUARANTY
CORPORATION, and
JOHN DOES One through Ten

DEFENDANTS

**DEFENDANT ACA’S MOTION TO DISMISS PLAINTIFFS’ SECOND
AMENDED COMPLAINT FOR LACK OF SUBJECT-MATTER JURISDICTION**

The Defendant, ACA Financial Guaranty Corporation (“ACA”), respectfully moves this Court to dismiss Plaintiffs’ Second Amended Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject-matter jurisdiction. In support of this Motion, Defendant states the following:

1. Plaintiffs contend in their Second Amended Complaint that federal subject-matter jurisdiction is founded upon complete diversity of citizenship under 28 U.S.C. § 1332(a). Second Amended Complaint ¶ 37 [Exhibit A].

2. However, Plaintiffs allege in their Second Amended Complaint that Plaintiff Robin Gerut is a resident of New York and that ACA has its principal place of business in New York. *Id.* at ¶¶ 18, 35. Because Gerut and ACA are citizens of the same state, this Court does not have jurisdiction of this cause due to a lack of complete diversity. *See Harrison v. Prather*, 404 F.2d 267, 272 (5th Cir. 1968) (“It is well settled that for purposes of diversity jurisdiction a corporation is a citizen of the state in which it has been incorporated and also the state where it has its principal place of business. It is equally settled that ‘complete diversity’ must exist for the court to retain jurisdiction of this cause.” (internal citations omitted)).

3. As set forth more fully in Defendant's Memorandum in Support, filed contemporaneously herewith and incorporated herein, this Court lacks subject-matter jurisdiction over this matter.

WHEREFORE, because this Court lacks diversity or other subject matter jurisdiction, for the reasons set forth in this Motion and Defendant's Memorandum, ACA respectfully request that this Court dismiss Plaintiffs' Second Amended Complaint.

RESPECTFULLY SUBMITTED, this the 2nd day of October, 2013.

/s/David W. Clark

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will deliver copies to all counsel of record.

/s/ David W. Clark

OF COUNSEL